



COMPANIES ACT 2016: PRACTICE NOTE NO. 4/2018

**PROCEDURES ON RESIGNATION OF SECRETARY UNDER
SECTION 237 OF THE COMPANIES ACT 2016**

This Practice Note is issued pursuant to section 20C of the Companies Commission of Malaysia Act 2001.

OBJECTIVE

2. This Practice Note serves to clarify the circumstances and procedures on the notification and resignation of a secretary under section 237 of the Companies Act 2016.

BACKGROUND

3. Subsection 237(1) of the Companies Act 2016 provides that a secretary may resign from his office by giving a notice to the board of directors of the company. Further, paragraph 237(3)(a) provides that the resignation will take effect upon the expiry of thirty days from the date of the notice lodged or the period specified in the constitution or the terms of appointment, as the case may be.

4. Whereas subsection 237(2) of the Companies Act 2016 provides that if none of the directors of the company can be

communicated with at the last known residential address, a secretary may notify the Registrar of that fact and his intention to resign from the office. By virtue of paragraph 237(3)(b), the secretary shall cease to be the secretary of the company on the expiry of thirty (30) days from the date of the notice to the Registrar under subsection (2).

PROCEDURES WHERE A SECRETARY RESIGNED

Resignation by Giving Notice to the Board of Directors (Subsection 237(1))

5. If a secretary resigned pursuant to subsection 237(1) by giving a notice to the Board of Directors, he may lodge a copy of the notice accompanied by a declaration in the **Appendix** to the Registrar if he is of the view that his resignation may not be notified to the Registrar.

6. As the case may be, the secretary shall cease to be the secretary of the company–

- (a) on the expiry of the period specified in the constitution;
- (b) on the expiry of the notification period to end his term of office based on the terms of his appointment; or
- (c) on the expiry of thirty (30) days from the date of the notice lodged to the Board of Directors by virtue of section 237(1).

7. The secretary is no longer allowed to lodge any document on behalf of the company or the directors after he ceases to be the secretary of the company.

8. Notwithstanding paragraph 6, the Board of Directors may bring to an end the term of office of the secretary earlier than the stipulated period of notice if so agreed by the secretary by lodging a notification to the Registrar pursuant to section 58 of the Companies Act 2016.

9. If the resigning secretary is the only secretary, the appointment of a new secretary must be effected within thirty (30) days from the day the office of the secretary becomes vacant. This is to comply with the requirement under section 240 of the Companies Act 2016.

10. In the case where there is no updates made by the company pursuant to section 58 of the Companies Act 2016, the secretary's name will still remain in the register and be reflected in the corporate profile of the company. However, if the secretary has lodged the copy of the resignation notice of the secretary with the Registrar, it will be made available to any person upon payment of the prescribed fee.

Notice to the Registrar (Subsection 237(2))

11. In circumstances where none of the directors of a company can be communicated, a secretary can resign under subsection 237(2) of the Companies Act 2016 by giving a notice of the fact to the Registrar that the directors cannot be communicated and of his intention to resign.

12. The notice must be accompanied with supporting evidence that none of the directors can be communicated, e.g. proof of returned correspondences addressed to the directors.

13. The resignation of the secretary resigning under subsection 237(2) will take effect thirty (30) days from the lodgement date of the notice to the Registrar and the office of the secretary will be vacant upon the expiry of that period.

EFFECT OF THIS PRACTICE NOTE

14. This Practice Note serves to clarify the circumstances and procedures on the resignation of a secretary under section 237 of the Companies Act 2016.

REGISTRAR OF COMPANIES

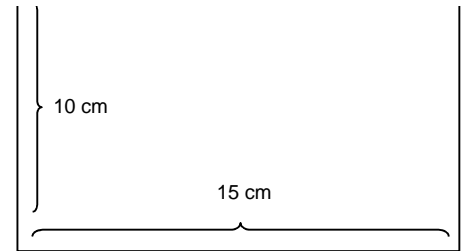
COMPANIES COMMISSION OF MALAYSIA

1 October 2018

Appendix

Company No.

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COMPANIES ACT 2016

Section 237(3)(a)

DECLARATION BY SECRETARY TO CEASE OFFICE

_____ (Company Name)

PARTICULARS OF COMPANY

Company Name :
Company No. :
Address :
Office Phone Number :
Email Address :
Fax Number :

PARTICULARS OF SECRETARY

Name :
NRIC No. :
Residential address :
Secretarial Firm Name :
Registration Number :
Mobile Phone Number :
Office Phone Number :
Fax Number :
Email Address :

DECLARATION TO CEASE OFFICE OF SECRETARY

I hereby confirm that I have ceased to be the secretary of the company on _____ (date) which is—

“ upon the expiry of thirty days from the date of my notice of resignation to the company’s Board of Directors by virtue of section 237(1);

“ based on the period specified in the company’s constitution;

“ based on my terms of appointment with the company;

(Please tick whichever is applicable)

and I hereby attached the copy of the notice of resignation given to the Board of Directors.

Company No.

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Declaration:

I confirm that the facts and information stated in this document are true and to the best of my knowledge.

Signed:

(Secretary)

Name :
License no/ Membership No. :
SSM Practicing Certificate No. :
Date :

LODGER INFORMATION

Name :
NRIC No :
Address :
Phone No :
Email :